THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21239 OF 2005

DATED:4.10.2005

Between:

K. Venkateswara Rao

…Petitioner

And

Visakhapatnam Municipal Corporation

Visakhapatnam rep. by its Commissioner

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21239 OF 2005

ORDER:

The petitioner claims to be joint owner of building site admeasuring 611.79 Sq. mts. in Plot No.23 in T.S.No.649/6 of Dondaparthi, Visakhapatnam. He statedly filed an application before the Visakhapatnam Municipal Corporation (the Corporation, for brevity) for building permission. The same was initially returned with certain objections which the petitioner submitted again. It appears, the Corporation did not pass any orders, but the petitioner proceeded with the construction taking advantage of deeming provision in Hyderabad Municipal Corporation Act, 1955 (for short, the Act). The Corporation issued notice under Section 452 of the Act. It appears, the petitioner did not submit explanation and therefore the Corporation issued final order/notice under Section 636 of the Act. Assailing the same, petitioner filed

O.S.No.712 of 1991 on the file of the Court of III Additional District Munsif, Visakhapatnam. The suit was dismissed on 27.12.1996. Aggrieved by the same, he filed appeal being A.S.No.172 of 2000 on the file of the Court of III Additional Senior Civil Judge, Visakhapatnam, and the learned Judge by judgment dt.31.3.2005 allowed the appeal declaring the notice issued by the Corporation under Sections 452 and 636 of the Act, as null and void. Be that as it is, again the Corporation issued notice under Section 452 of the Act on 27.9.2005 to submit explanation within twenty-four hours as to why the building which is found to be contrary to sanctioned plan should not be removed. Assailing the same, petitioner filed the present Writ Petition.

The impugned notice is issued to one Kolluru Seshagiri Rao and others. He did not file the Writ Petition. It is submitted that Kolluru Seshagiri Rao is co-sharer in the proper bearing No.43-29-53. A reading of the impugned notice would show that the petitioner has violated the provisions of the Act, Master Plan, Zoning Regulations and Rules in G.O.Ms.No.423 dt.31.7.1998. It was also pointed out that the petitioner has constructed commercial shops in cellar floor which is meant for parking. It is brought to the notice of this Court that Seshagiri Rao approached the Corporation and submitted a letter on 28.9.2005 requesting a week's time for removing the existing structures and additional constructions in the shopping complex. Therefore, in spite of strenuous submission by the learned counsel for the petitioner, Sri O.Manoher Reddy, that there is sufficient parking space and there is no inconvenience to public, this Court is not inclined to go into the question. Insofar as the generator room and servant quarters are concerned, if the building plan submitted by the petitioner provides for such facilities in the parking area, it is for the Corporation to consider. Insofar as the constructions made in the parking area is concerned, even as per the relevant Government Orders authorizing regularization of unauthroised constructions, no permission in the cellar/parking area exclusively meant for parking the vehicles of the occupants or visitors of the complex can be permitted, nor regularized.

In view of the above, this Court does not find any infirmity or illegality in the Corporation initiating action against the petitioner, especially when Kolluru Seshagiri Rao, whose name is found in the show cause notice issued under Section 452 of the Act, himself asked for time to remove the unauthroised constructions.

The Writ Petition is accordingly dismissed. No costs.

_____

(V.V.S.RAO, J)

4.10.2005

bnr